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10/750,708	01/02/2004	Robert J. Simmons	J-BSIM.1009	3807
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ROBERT D. VARITZ, P.C. 4915 SE 33RD PLACE PORTLAND, OR 97202			EXAMINER A, PHI DIEU TRAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/750,708  
Filing Date: January 02, 2004  
Appellant(s): SIMMONS, ROBERT J.

ROBERT VARITZ  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 08/27/2007 appealing from the Office action mailed 4/17/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2203113

UECKER ET AL

6-1940

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Paragraph 4 “utilizing direct lateral engagement therebetween ” is confusing as it is unclear what applicant is trying to claim. It is unclear “therebetween” what. The “crane structure” and “superstructure “ are not claimed together; rather, the paragraph 3 sets forth the selection being one of a crane, a superstructure and additional building infrastructure. As only one of a crane, a superstructure and additional building infrastructure is claimed, “therebetween” is thus unclear.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Uecker et al (2203113).

Uecker et al discloses a building method for fabricating a site built plural story building comprising furnishing a column (15) and beam (16) structural building frame possessing a load bearing portion which is defined by nodally interconnected columns and beams, at least one

column(15) is formed as a hollow tubular structure, in the at least one column, substantially immediately above a nodal connection between the mentioned one column and a beam, an upper utility region which extend above and beyond the frame's load bearing portion, which region terminates in a nominally open, upwardly facing mouth (the opening which receives part 27) which opens to the hollow interior of the at least one column to define therewith a utility port, employing the defined utility port, inserting downwardly thereinto, for stabilized insertion, reception and use, a building construction extension instrumentality selected from the list consisting of an installable/removable crane structure (25), and at least for such a crane structure and superstructure, utilizing direct lateral engagement therebetween and the receiving column utility port to furnish fully all lateral stabilization of and support for the thus port-received structure (the crane when installed, is anchored in the port per part 27, and the port provides for the holding of the crane in place; also the claim is using comprising language which does not exclude other structures from attaching to the crane), furnishing the mentioned building frame with more columns (the other columns 15) each of which is formed as a hollow, tubular structure and providing in each of those more columns upper end utility regions, utilizing the frame of nodally interconnected columns and beams including the mentioned nodal connection which exists between the at least one column and the mentioned horizontally extending beam, furnishing direct load bearing support for any such base-seated crane with seating of a crane base in such an open column end furnishing the totality of lateral stabilization and support for the seated crane (the port provides for the holding of the crane in place and stabilized it laterally as the crane is seated on the port; also the claim is using comprising language which does not exclude other structures from attaching to the crane).

Per claim 5, Uecker et al shows all the claimed method steps and the crane structure disclosed by Uecker et al is **employable** to manipulate to install another crane structure in an adjacent utility port.

**(10) Response to Argument**

With respect to the 112 issue, as pointed out by Examiner above, the "crane structure" and "superstructure" are not claimed together as clearly set forth in claim 3. The claim states "a building, construction -extension instrumentality selected from the list consisting of .....an installable/removable crane building...a column-like element for the addition of selected building superstructure....additional building infrastructure....., and at least for such a crane and superstructure" clearly shows applicant is claiming only one of the listed elements; and the limitation "at least for such a crane structure and superstructure, utilizing direct lateral engagement therebetween and the receiving column utility port" appears to set forth a relationship between the crane structure and a superstructure which are not claimed together, in addition to the utility port. The claim is thus indefinite.

Uecker et al shows all the claimed method steps. Uecker et al's disclosed method steps can also be used in fabricating a site built, plural story building. Uecker et al also shows the utility port (the opening where part 27 is inserted) being located above a load bearing portion (16 and 15) of the building frame. Uecker in figure 2 more clearly shows the opening being located above a load bearing portion (the structure at 16 and 15) with the port extending above and beyond the portion to be connected to part 46.

With respect to applicant's statement that " the crane shown in 113 is not fully supported by anything which may remotely be compared to applicant's port", examiner would like to point out that the references teaches all the claimed method steps and the claimed structures thereof.

With respect to applicant's statement to " utilizing engagement therebetween and the receiving column utility port to furnish Fully all lateral stabilization of and support for the thus port received structure" examiner respectfully points out that Uecker et al's port certainly can function as claimed.

With respect to applicant's statement of " the utility port and column components be configured to allow additional infrastructure to be feedable downwardly through the ports toward a selected elevation in the building structure", examiner respectfully sets forth that the limitation is only one of three possible limitations which must be met by Uecker as claimed " which is drawn from the list consisting of .....an installable...crane structure....b) a column like element....c).....load bearing portion", and Uecker shows one of the claimed choices.

With respect to claim 4, Uecker et al shows each column components provides with a like upper end utility region (the utility region being where the vertical part of the rails insert into, instead of the support of the crane at the same elevation).

Applicant's arguments to claims 5-6 are thus also moot in view of the statements above.

Furthermore, examiner would like to state that Uecker et al shows building frame as claimed and the frame has a load bearing portion which is clearly pointed out above. With respect to the utility port, Uecker et al's port functions the same as applicant to allow for the mounting of a crane as claimed and located above the load bearing portion as clearly pointed out above. The port is also hollow as it allows for the insertion of the crane structure. The port is

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also able to provide for the full lateral stabilization of the received structure. Uecker et al's teaching of the port that meets applicant's claimed limitation.

Applicant's arguments are thus moot.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Phi Dieu Tran A



11/24/07



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